

Plant Patent Application  
Serial No. 09/880,952  
Attorney Docket No.: 4194-030268

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit 1661

In re Application of

Guennadi EREMIN

Serial No. 09/880,952

Filed January 11, 2002

Examiner - Not Yet Assigned

Prunus Plant Named 'VVA-1'

Pittsburgh, Pennsylvania  
May 20, 2003

FAX RECEIVED

MAY 20 2003

PETITIONS OFFICE

PETITION UNDER 37 C.F.R. § 1.182VIA FACSIMILE 703-308-6916 (12 PAGES)

Ms. Gena Jones  
Office of Petitions/Office of Patent Legal Administration  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

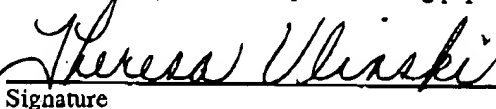
Dear Ms. Jones:

Applicant respectfully petitions for a filing date pursuant to 37 C.F.R. § 1.182  
in the above-identified application. A new Declaration and Power of Attorney, the Petition  
Fee, and the Filing Fee are submitted herewith.

I hereby certify that this correspondence is being faxed to Gena  
Jones (Office of Petitions) at the United States Patent and  
Trademark Office at 703-308-6916 on May 20, 2003.

Theresa Ulinski

(Typed name of person faxing papers)



Signature

05/20/2003  
Date

Adjustment date: 07/18/2003 AKELLEY  
02/06/2003 SDIRETA1 00000011 09880952  
01 FC:8026 -130.00 DP  
07/18/2003 AKELLEY 00000014 230650 09880952  
01 FC:2003 130.00 DA 130.00 DP

**TIMELINE**

1. The above-identified application was filed *pro se* on June 15, 2001 by a plant breeding company (Varieties International of Lafayette, Oregon) on behalf of the Applicant, a citizen of Russia. The patent application packet contained the following: Plant Patent Application Transmittal, Fee Transmittal and the fee of \$245.00, Plant Patent Application Declaration, Statement Claiming Small Entity Status, Plant Color Coding Sheet, and two (2) copies of the Specification and Claim. The packet did not contain a drawing.

2. A Notice of Incomplete Nonprovisional Application was mailed to Applicant on August 17, 2001. The Notice indicated that a filing date had not been accorded to the application because the application was deposited without drawings. The Notice requested drawings and a new Declaration and gave a two (2) month non-extendable period to reply.

3. Neither of the Applicant or Varieties International has any copies of the application or other documents relating to this application in their files and the assistant who helped file the application is no longer in the employ of Varieties International. All documents referenced herein are copies from the United States Patent and Trademark Office file. Attachment A is a copy of a letter dated January 3, 2002 from Applicant's assistant along with a photograph of the claimed plant and a description thereof – sent to the United States Patent and Trademark Office that received a date stamp at the Office of Initial Patent Examination on January 11, 2002. The January 3, 2002 letter and enclosures demonstrate that the *pro se* Applicant complied with the requests in the Notice of Incomplete Nonprovisional Application. In the letter, Applicant even provided authorization to use a credit card for any additional fees required by the Patent Office.

4. According to the Bib Datasheet in Attachment B, the application was given a filing date of January 11, 2002 and is believed to have been sent to the Plant Patent

Examining Group (Group 1600) for examination. However, Applicant believes it is at this point that Varieties International was contacted by Examiner Wendy Haas to request additional photographs of the rootstock in bloom, although the exact timing of this request is unclear and not identifiable from the file history. Applicant waited for the rootstock to bloom, took additional photos and sent them in. At this point, however, Applicant was told that these photographs were submitted too late.

5. According to a telephone conversation on or around March 6, 2003 between the undersigned and Doshie E. Day of the Office of Initial Patent Examination, Ms. Day remembers this case and the other three (3) similar cases of Applicant quite well. Ms. Day stated that the Plant Patent Examining Group sent the subject application back to her office and asked that she revoke the filing date of January 11, 2002 because the photograph was not timely submitted. This was not the case since the original photograph was timely filed.

6. Over a year later, Applicant was surprised to receive a Notice of Abandonment dated January 23, 2003 for failure to reply in a timely matter to the Notice of Incomplete Nonprovisional Application for the subject application. Applicant and Varieties International sincerely believed that they had successfully complied with all of the requirements for filing the subject application to the best of their knowledge and ability.

7. Applicant (via Varieties International) immediately contacted The Webb Law Firm to assist in this matter. In the absence of any documentation related to the application, including the application itself, another Declaration and Power of Attorney form was drafted, sent to the breeder in Russia for execution, and submitted to the United States Patent and Trademark Office.

8. After numerous telephone conversations with personnel in the Petitions Branch, Ms. Gena Jones (Office of Patent Legal Administration) requested submission of a

new Declaration executed by the Russian breeder that specifically refers to the dates on which the drawings and specification were filed. Attached herewith is the new Declaration that complies with Ms. Jones' request.

### REQUEST

All requirements to accord a filing date were complied with on January 11, 2002. Applicant and Varieties International tried to the best of their knowledge and ability to complete the subject application in a timely fashion. Applicant respectfully petitions for a filing date of January 11, 2002 and requests that the subject application be reinstated.

Date: May 20, 2003

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON  
ORKIN & HANSON, P.C.

By Patricia A. Olosky  
Patricia A. Olosky  
Registration No. 53,411  
Attorney for Applicant  
700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219-1818  
Telephone: 412-471-8815  
Facsimile: 412-471-4094  
E-Mail: webblaw@webblaw.com